IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 597 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHATURJI PANCHAJI THAKORE

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

1. Special Criminal Application No. 597 of 2001

MR PRASHANT MAKAD for MR YOGESH S LAKHANI for Petitioner No. 1

RULE SERVED for Respondent No. 1

MR S.S.PATEL, APP for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 12/10/2001

ORAL JUDGEMENT

In this petition filed under Article-226 of the

Constitution of India, petitioner has challenged the order dated June 6, 2001 (Annexure-'C' to the petition) passed by the externing authority i.e. Sub-Divisional Magistrate, Radhanpur, District Patan, by which he has externed the petitioner for a period of two years from five districts i.e. Patan, Mehsana, Banaskantha, Kutch and Surendranagar and also the order dated July 12, 2001 (Annexure-D to the petition) passed by the appellate Authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

2. A show-cause notice dated September 16, 2000 under Section 59 of the Bombay Police Act ('Act' for short) was issued to the petitioner, wherein, three allegations were made against him to the effect that he is a strong headed quarrelsome and aggressive person who has no fear of law and order, picking up quarrel with people and give threats to kill them, continues his anti social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him and the activities carried out by him is detrimental for maintenance of public order. Besides this, six cases for commission of the offences under IPC and 8 Chapter cases are also registered in Radhanpur police station, against him. Therefore, by issuing show-cause notice the petitioner was called upon to show -cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgment.

3. The petitioner replied to the said show-cause notice. The externing Authority, after considering the reply and other documents on record, passed the impugned order of externment dated June 6, 2001 in exercise of the powers conferred under Section 56(b) of the Act externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing Authority, the petitioner preferred an appeal before the appellate Authority, which was dismissed by the appellate Authority vide order dated July 12, 2001 which has given rise to the present petition.

5. Mr.Prashant Makad, learned advocate for the petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. Besides this, he also raised

the contention that though in the impugned order of externment the externing authority has considered two more cases registered against the petitioner at Radhanpur Police Station vide CR No. II-2 of 2001 and II-34 of 2001 for the offences punishable under IPC, but there is no mention about the said cases in the show-cause notice. Therefore, according to the learned advocate for the petitioner the impugned order of externment suffers from the vices of non-application of mind, and is, therefore, liable to be quashed and set aside.

6. Mr.S.S.Patel, learned APP appeared for the respondent State and has opposed the petition. He contended that the petitioner is a strongheaded, quarrelsome and aggressive person and his activities are detrimental to the maintenance of public order at large as he is involved in more than 14 cases and during the pendency of the proceedings two more cases are registered against the petitioner by the externing authority and, therefore, the externing authority has rightly passed the order of externment for externing the petitioner for a period of two years from the above mentioned five districts. He, therefore, urged to dismiss the petition.

7. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the order passed by the externing Authority, as well as the order passed by the appellate Authority and other papers annexed to the petition.

8. It is true that the externing Authority vide notice dated September 16, 2000 did mention about several allegations as well as registration of 14 cases against the petitioner. Besides this during the pendency of the proceedings two more cases are registered against the petitioner vide CR No. II-2 of 2001 and II-34 of 2001 with Radhanpur Police Station for commission of the offences under Sections 504, 506(b) and 114 of the IPC which according to him are registered during the pendency of the proceedings. Admittedly, the said cases are not referred to in the show-cause notice as they are committed by the petitioner during the pendency of the proceedings, therefore, it is clear that the externing authority has taken into account extraneous material which are not subject matter of the show-cause notice while passing the order of externment. In this connection a reference can be made to the judgement of the Division Bench of the Bombay High Court in the case of GANU V. M.C.CHITLE, 1988 Cr. L.J. 1547 wherein the Bombay High Court has considered a similar case and held that while passing externment order if extraneous

circumstances and material which were not subject matter of the show cause notice are taken into account by the authority the order of externment cannot be sustained and liable to be quashed. The ratio laid down in the said judgement is squarely applicable to the facts of the present case. Admittedly, the offence which is registered against the petitioner vide CR No. II-2 of 2001 and II-34 of 2001 with Radhanpur Police Station was not subject matter of the show cause notice but while passing the impugned order of externment, the externing authority has considered the same. The petitioner was not given any opportunity to reply to the said offence registered against him and thus it is clear that the externing authority has considered extraneous circumstances and material while passing the impugned order of externment. On this count also the order of externment requires to be quashed and set aside.

9. On overall view of the matter, the order of externment passed by the externing authority externing the petitioner for a period of two years from five districts and the order passed by the appellate authority confirming the externment order, both are required to be quashed and set aside.

10. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned orders at Annexures-'C' and Annexure 'D' to the petition are quashed and set aside. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

jayanti*